

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Michael Williams; José Ramírez-Garofalo; Aixa Torres;
and Melissa Carty,

Index No. 164002/2025

Petitioners,

Hon. Jeffrey H. Pearlman

-against-

Motion Seq.001

Board of Elections of the State of New York; Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board of Elections of the State of New York; Raymond J. Riley, III, in his official capacity as Co-Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Anthony J. Casale, in his official capacity as Commissioner of the Board of Elections of the State of New York; Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York; Kathy Hochul, in her official capacity as Governor of New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President *Pro Tempore* of the New York State Senate; Carl E. Heastie, in his official capacity as Speaker of the New York State Assembly; and Letitia James, in her official capacity as Attorney General of New York,

Respondents,

-and-

Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenors-Respondents.

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**INTERVENOR-RESPONDENTS' MEMORANDUM OF LAW
REGARDING THE PROPER REMEDY**

Intervenor-Respondents submit this Memorandum in response to the Court's January 8, 2026 request for briefing on the Court's options if it were to find that the existing 11th Congressional District ("CD11") violates the New York Constitution because it gives Black and Hispanic voters insufficient electoral success. While Intervenor-Respondents believe that there is no basis for that conclusion under either the New York Constitution or the evidence before this Court—and, further, that any such ruling would very obviously violate the U.S. Constitution's Equal Protection Clause by requiring a racial reconfiguration of CD11 without even arguably satisfying strict scrutiny—Intervenor-Respondents submit this Memorandum to explain the Court's two permissible procedural paths under the New York Constitution and caselaw.

As set forth below, this Court has two constitutionally permissible procedural paths: (1) if this Court believes that it must adopt a new configuration of CD11 for the 2026 elections, it must expeditiously adopt its own map with the help of a special master, as the Court of Appeals ordered the Supreme Court to do in *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022); or (2) given Petitioners' unexplained delay in filing this lawsuit, this Court could conclude that any remedy can await the 2028 election. In that latter circumstance, this Court should follow the constitutionally preferred path articulated in *Hoffman v. New York State Independent Redistricting Commission*, 41 N.Y.3d 341 (2023), and permit the Independent Redistricting Commission ("IRC") to create a reconfigured CD11, which would then be sent to the Legislature for its consideration.

A. The 2014 Amendments to the New York Constitution created a process that vests authority to conduct redistricting in an IRC-driven process, where the IRC proposes a map for the Legislature's consideration and the Legislature then adopts a map based upon the IRC's proposal. This same process applies if a court orders that an existing map be amended due to a legal defect. N.Y. Const. art. III, § 4(e). The 2014 Amendments provide that every ten years and "**at any other**

time a court orders that congressional or state legislative districts be amended, an independent redistricting commission **shall** be established to determine the district lines for congressional and state legislative offices.” *Id.* § 5-b(a) (emphases added). The IRC “shall submit to the legislature [its redistricting] plan and the implementing legislation therefor on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two”—which is the year of a midterm election. *Id.* § 4(b). “[A]t least two-thirds of the members” of the Legislature must then vote to adopt the IRC’s congressional plan and present it to the Governor for action. *Id.* § 4(b)–(c). If, however, the Legislature rejects the map, the IRC shall “prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan” no “later than February twenty-eighth.” *Id.* § 4(b). If the second redistricting plan fails, the Legislature may amend the IRC’s maps; but pursuant to a statutory provision that informs how the constitutional IRC process must operate, in no case shall any legislative alteration of the IRC’s districts “affect more than two percent of the population in any district.” *Hoffman*, 41 N.Y.3d at 352. This IRC-centered process governs for court-ordered remedial redistricting as well, *see* N.Y. Const. art. III, § 5-b(a), although the specific dates and timing specified in Article III, Section 4 do not apply, *see Hoffman*, 41 N.Y.3d at 370–71.

The map that the Legislature enacts (or amends, in response to a court order) under the IRC process “shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order.” N.Y. Const. art. III, § 4(e). “The process for redistricting congressional and state legislative districts” set forth in Article III “**shall** govern redistricting in this state **except** to the extent that a court is **required** to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.” *Id.* (emphases added). When that occurs and it is necessary that the Court “order[] that

congressional or state legislative districts be amended,” the IRC shall be established again, *id.* § 5-b, and “the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities” through the IRC-driven process, *id.* § 5; *see Hoffman*, 41 N.Y.3d at 358.

B. Two recent decisions from the Court of Appeals lay out the boundaries of how this process should work in practice, depending on how quickly the court believes it must act.

In *Harkenrider*, the Court of Appeals explained how a court can order a remedy for an unconstitutional map where the circumstances justify immediate relief, such that resort to the IRC-driven process is not practicable. There, after the Legislature rejected the IRC’s initial redistricting plan, the IRC deadlocked and failed to provide the Legislature a second plan. *Harkenrider*, 38 N.Y.3d at 504–05. The Legislature—controlled by Democrats—then created and enacted its own gerrymandered maps “undisputedly without any consultation or participation by the minority Republican party,” and the Governor signed the new redistricting legislation into law. *Id.* at 505. That same day, a group of New York voters commenced a special proceeding challenging the congressional map. *Id.* After determining that the map was both procedurally and substantively unconstitutional, the Court of Appeals concluded that the proper remedy was for the “Supreme Court to ‘order the adoption of . . . a redistricting plan’ with the assistance of a neutral expert, designated a special master, following submissions from the parties, the legislature, and any interested stakeholders who wish[ed] to be heard.” *Id.* at 523 (citation omitted). It reasoned that even though the petitioners challenged the map as soon as was possible, because the election process was “already underway” and the IRC’s constitutional deadlines had already passed, “[p]rompt judicial intervention [was] both necessary and appropriate to guarantee the People’s right to a free and fair election.” *Id.* at 521–22. The Court explained that “the Constitution explicitly authorizes judicial oversight of remedial action in the wake of a determination of

unconstitutionality—a function familiar to the courts given their obligation to safeguard the constitutional rights of the People under our tripartite form of government.” *Id.* at 523 & n.20.

Two years later in *Hoffman*, the Court of Appeals explained that the judicially adopted map process that it had articulated in *Harkenrider* was not the constitutionally preferred one. There, five weeks after the *Harkenrider* court adopted the 2022 redistricting maps, certain voters sought a writ of mandamus to compel the IRC to comply with the constitutionally required redistricting process, arguing that the judicially created maps could not stand for longer than was necessary to remedy the constitutional violation prior to the 2022 election. *Hoffman*, 41 N.Y.3d at 354–55. The Court of Appeals agreed. *Id.* at 361. The Court explained that “[c]ourt-drawn judicial districts are generally disfavored because redistricting is predominately legislative,” *id.*, and the Constitution accordingly “places express limitations on court-drawn maps,” *id.* at 357. The New York Constitution authorized the *Harkenrider* court to fashion maps only “to the ‘extent’ it was ‘required’ to do so . . . to alter the IRC-based redistricting process for that imminent election cycle—and to that ‘extent’ alone.” *Id.* at 358 (citation omitted). When not strictly necessary, the Court made clear that “the Constitution requires the IRC map-drawing process.” *Id.* As a result, the Court limited *Harkenrider*’s judicially drawn congressional districts to the 2022 election and ordered the IRC to comply with its constitutional mandate by submitting a second congressional redistricting plan to govern future elections. *Id.* at 370. The IRC proposed a new map 63 days later, and the Legislature adopted that map after making modest changes. *See* NYSCEF Doc. No.13 (“Intervention.Mot.”) at 4–5; 2024 NY Senate Bill S8639; 2024 NY Assembly Bill A9304.

C. Pursuant to the above-described constitutional provisions and caselaw, to the extent that this Court finds that the existing CD11 violates the New York Constitution, this Court has two options.

First, if the Court believes that the circumstances justify adopting a new configuration for CD11 for the 2026 elections, this Court should immediately appoint a special master to create a reconfigured CD11 with input from the parties and any interested *amici* without IRC or legislative involvement, as the Court of Appeals ordered in *Harkenrider*. Given that the election calendar begins on February 24, 2026, the constitutionally preferred IRC-driven process is not possible for the 2026 election cycle. There would be no practicable way for the IRC to reconvene, obtain any needed public input, draft a new CD11, send that reconfiguration to the Legislature, and have the Legislature adopt it (with or without any constitutionally permissible, modest modifications) before February 24. And that is not even taking into account the time absolutely needed to permit a fair opportunity for expedited appellate proceedings, as occurred in *Harkenrider*. That would include time for Intervenor-Respondents to file emergency stay applications in New York's appellate courts and the Supreme Court of the United States, if necessary. *See Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401 (2022) (granting an emergency stay application of a court order adopting a new legislative map because that map was a racial gerrymander in violation of the Equal Protection Clause). **For all of that to occur by February 24, a new configuration for CD11 must be adopted by early February, which is only possible if this Court follows the *Harkenrider* path of a court-drawn map with the help of a special master.**

Second, if this Court concludes that the circumstances here—including Petitioners' egregious, unexplained delay in filing this lawsuit, NYSCEF Doc. No.115 (“Inter-Resp's Br.”) at 43–44—make this case substantially different from *Harkenrider* (where the challengers filed their lawsuit the same day the map was adopted), **then it should permit the IRC to reconvene and create a new configuration of CD11 to send to the Legislature, pursuant to the IRC process, for the 2028 election cycle, allowing the current configuration of CD11 to govern the 2026**

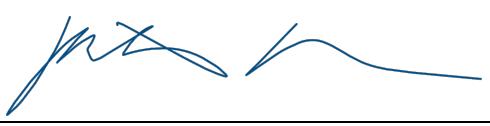
elections, as it has in 2022 and 2024. Given the 2028 election cycle timeframe, the IRC and the Legislature would have ample time to undertake the constitutionally preferred redistricting process, as the Court of Appeals explained in *Hoffman*. This would also provide sufficient time for orderly appellate review of this Court's ultimate merits decision to occur, avoiding the need to rush these significant constitutional issues in emergency stay applications.

CONCLUSION

Should the Court determine that the current configuration of CD11 violates the New York Constitution, it can either: (1) expeditiously adopt its own map by early February, with the help of a special master, following the model the Court of Appeals ordered in *Harkenrider*, 38 N.Y.3d 494; or (2) await the 2028 election cycle, follow the constitutionally preferred path articulated in the New York Constitution, *Hoffman*, 41 N.Y.3d 341, and permit the IRC to create a reconfigured CD11, which reconfiguration would then go to the Legislature for its consideration.

Dated: New York, New York
January 12, 2026

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CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the Court's ten-page limit imposed at the conclusion of trial and the word count limitations set forth in 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, it contains 1,850 words, excluding parts of the document exempted by Rule 202.8-b(b).

I certify pursuant to Rule 18 of the Part 44 Rules that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within this submission.

Dated: New York, New York
January 12, 2026

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